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September 30, 2010

Via Email and
Certified Mail Return Receipt Requested

Ms. Barbara Nann, Attorney
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel
Superfund Branch (6RC-S)
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Dispute Regarding EPA's Decision Document for the Time Critical Removal Action at the San Jacinto River Waste Pits Superfund Site
Administrative Order on Consent for Time Critical Removal Action CERCLA Docket No. 06-12-10
San Jacinto River Waste Pits Superfund Site, Harris County, Texas

Dear Ms. Nann:

This is in response to your letter dated September 23, 2010 regarding the above-referenced matter. Most of the first three (3) pages of your letter (until the final paragraph on Page 3 thereof) discuss EPA's process in determining that a removal action is warranted at the San Jacinto River Waste Pits Superfund Site ("Site"). MIMC has not disputed EPA's determination in this regard; therefore, this letter does not respond to this portion of your letter.

In the paragraph beginning on the bottom of Page 3 and extending onto Page 4 of your letter, you state that "EPA called for a strong cover that could withstand unusual storm events susceptible to the area until the Site is fully characterized and a remedy is selected." MIMC agrees that such a cover is necessary and this is the type of cover that the Respondents proposed to EPA in "Alternative 3" contained in the June 15, 2010 document entitled "Revised Draft Time Critical Removal Action Alternatives Analysis" ("TCRA Alternatives Analysis").

In the same paragraph, you go on to state that "The EPA's Contaminated Sediments Guidance recommends that the 100 year flow event is the starting point when evaluating the effects of a storm on a cover designed to act as a barrier for containing hazardous substances." MIMC disagrees that this EPA guidance document establishes the 100 year flow event as the "starting point" of the evaluation process for a cover. In fact, in Figure 3 of the guidance, EPA indicates that the first steps in selecting a cap would be to "identify available cap materials" and

"determine cap design objectives". In this case, the objective of the cap is to protect the hazardous substances from erosional forces during a 5-7 year period (as expressly stated by EPA in the "Decision Document for the Time Critical Removal Action at the San Jacinto River Waste Pits Site, Harris County, Texas" – hereinafter referred to as the "Decision Document"). It is also important to note that EPA's Contaminated Sediments Guidance addresses permanent remedies, not temporary measures required by the Administrative Settlement Agreement and Order on Consent for Removal Action and the associated Statement of Work.

Continuing in the same paragraph, you refer to EPA's consultation with TCEQ regarding the appropriate removal action design. In TCEQ's June 8, 2010 comment letter to EPA regarding the TCRA Alternative Analysis, TCEQ states that it recommends the use of the 100 year storm event and references Tropical Storm Allison, Hurricane Katrina and Hurricane Ike as examples of the "100 year storm event." As explained in MIMC's September 10, 2010 notice of dispute, each of the referenced storm events is not only a 100 year storm event but also a 10 year flow event. The Respondents proposed a design that would withstand such events in its TCRA Alternatives Analysis – Alternative 3.

With respect to the first full paragraph on Page 4 of your letter, MIMC agrees that the National Contingency Plan ("NCP") provides for capping of contaminated soils or sludges as an appropriate removal action option. MIMC disagrees that the NCP calls for the use of any particular storm event as the basis for the design of the cap.

With respect to the final paragraph on Page 4 of your letter, MIMC disagrees that the design chosen by EPA in its Decision Document best addresses "temporarily" the release of dioxins from the waste pits or offers the "most flexibility" in selecting future remedies. MIMC contends that Alternative 3 as proposed by Respondents in the TCRA Alternatives Analysis provides the most flexibility in selecting future remedies and also best addresses temporarily (i.e., during the 5-7 year period during which a final remedy will be selected) the potential release of dioxin from the waste pits. The additional protection necessary for a longer-term remedy will be addressed at the remedy stage of the Superfund process but is not appropriate at this removal stage. The statement in your letter that "any type of permanent on-site containment would in all likelihood be designed for a storm even greater than a 100 year period" is speculative; the final remedy will be selected and designed in accordance with EPA guidance after completion of the remedial investigation and feasibility study.

MIMC appreciates your thoughtful consideration of this matter.

Sincerely,

Albert R. Axe, Jr.

cc: John Cermak
David Keith

OCT 04 2010